

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-090638
		TRIAL NO. B-0511389
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
ERNEST SEAY,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant Ernest Seay pleaded guilty to two counts of aggravated robbery,² one of which was accompanied by a gun specification, and escape.³ In exchange for his guilty plea, the remaining charges of having a weapon under a disability, abduction, robbery, and felonious assault were dismissed. In three assignments of error, he now contends that his 25-year sentence was excessive; that his sentence was unconstitutional; and that his trial counsel was ineffective. We overrule the assignments of error and affirm the trial court's judgment.

We address together Seay's first two assignments of error, which contend that his sentence was excessive and unconstitutional. We review Seay's sentence under a two-part analysis: we first must decide whether the sentence was contrary to law; and if it was not, then we decide whether the trial court abused its discretion in

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² R.C. 2911.01(A)(1) and R.C. 2911.01(A)(3).

³ R.C. 2921.34(A).

imposing the sentence.⁴ Seay's sentence was not contrary to law because it was, in each of its components, within the applicable statutory range.

We now decide whether the trial court abused its discretion in sentencing Seay to 25 years' incarceration. Before pleading guilty, Seay faced a maximum term of incarceration of over 50 years. At sentencing the court noted that Seay had a lengthy and serious criminal record that included convictions for rape, robbery, aggravated robbery, breaking and entering, and other out-of-state offenses; that Seay had committed the offenses in this case shortly after he had been released from prison; that this was a serious case; and that the victims had suffered great harm as evidenced by their victim-impact statements. We are convinced that the trial court did not abuse its discretion in sentencing Seay. And his sentence was constitutional because the trial court complied with the mandates of *State v. Foster*,⁵ which is still the law in Ohio.⁶

Finally, Seay argues that his trial counsel was ineffective. We are convinced that his arguments in this vein are supported by neither the record nor the law. Four out of the five arguments were waived by his guilty plea because they concerned alleged errors regarding the state's ability to prove his factual guilt that had occurred before his guilty plea.⁷ The fifth argument contends that trial counsel had promised Seay a six-year term of incarceration, but that contention is unsupported by the record.

⁴ *State v. Williams*, 1st Dist. No. Co81148, 2010-Ohio-1879, ¶18, citing *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124.

⁵ 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.

⁶ *State v. Elmore*, 122 Ohio St.3d 472, 2009-Ohio-3478, 912 N.E.2d 582.

⁷ *State v. Spates*, 64 Ohio St.3d 269, 272, 1992-Ohio-130, 595 N.E.2d 351, citing *Tollett v. Henderson* (1973), 411 U.S. 258, 267, 93 S.Ct. 1602; accord *State v. Morgan*, 181 Ohio App.3d 747, 2009-Ohio-1370, 910 N.E.2d 1075, ¶25.

Having concluded that Seay's assignments of error are without merit, we affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN, P.J., HENDON and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on June 23, 2010

per order of the Court _____.
Presiding Judge